

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO ABAYON, JOSE ABAYON (AT LARGE), JONATHAN ABAYON, (AT LARGE), CELSO ABAYON, PILOY DELA SERNA AND IRENEO DE LEON, ACCUSED.

G.R. No. 142874. July 31, 2002

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PER CURIAM:

This is an automatic review of the 21 January 2000 Decision of the Regional Trial Court of Dipolog City finding Francisco Abayon, Celso Abayon, Piloy dela Serna and Ireneo de Leon guilty of Rape with Homicide. Each accused was sentenced to death and directed to indemnify the heirs of the victims the amount of P280,000.00.[1]

On 16 May 1996 a report was made to the Sibuco Municipal Police Station, Sibuco, Zamboanga del Norte, that the Alibio family, composed of Nelson Alibio, his wife Myrna, and their minor children Maribel, Ronald and Josephine,[2] was killed at Barangay Sto. Niño, Sibuco, in the evening of 11 May 1994. The report also revealed that the bodies of the victims were buried at the bank of the Tangarak River.

On 19 July 1996 Police Inspector Edito V. Zapanta, Chief of Police of Sibuco, accompanied by two (2) other policemen, was led to the grave site of the victims by the person who reported the crime. Three (3) bones were recovered.

Upon request of the authorities, a medico-legal examination was conducted by the PNP Crime Laboratory Service, Zamboanga City, to determine the origin of the bones. On 20 August 1996 a report prepared by Dr. Rodolfo M. Valmoria, Chief of the Medico-Legal Office, Regional Unit 9, Zamboanga City, was released with the finding that the bones were indeed of human origin.[3]

On 18 November 1996 an Information was filed charging Francisco Abayon, Jose Abayon, Jonathan Abayon, Celso Abayon, Piloy Dela Serna and Ireneo de Leon with Rape with Multiple Homicide with the qualifying circumstances of treachery and evident premeditation. The case was raffled to RTC-Br. 27, Siocon, Zamboanga del Norte. Only Francisco Abayon, Celso Abayon, Piloy dela Serna and Ireneo de Leon were arrested. Jose Abayon and Jonathan Abayon, up to the time of this appeal, remain at large.

The accused were arraigned on 21 March 1997 and the trial started on 21 October 1997. But since the accused, with the exception of those who remain at large, were detained at the Zamboanga del Norte Provincial Jail, Sicayab, Dipolog City, the case was reraffled with the approval of the Court En Banc to RTC-Br. 9, Dipolog City, which continued hearing the case until its conclusion.

The prosecution presented Vicente Dauba, the person who reported the crime to the police and the lone eyewitness, as well as Police Inspector Edito V. Zapanta and Dr. Rodolfo M. Valmora.

In convicting the accused, the trial court relied chiefly on the testimony of Vicente Dauba, a tenant and nephew of the accused Jose Abayon, his maternal grandmother being also an Abayon. At the time the crime was committed, Vicente claimed he was staying in the house of Jose Abayon in Sto. Niño, Sibuco, Zamboanga del Norte.

Vicente Dauba testified that Jose Abayon ran for the post of barangay kagawad and won in the 11 May 1994 barangay elections. In the evening of that day, Jose celebrated his victory in his house. Among those present were his sons Jonathan, Celso and Francisco, sons-in-law Piloy dela Serna and Ireneo de Leon, Nelson Alibio and Vicente Dauba.

At about 10:00 o'clock that evening Jose Abayon decided to transfer to his other house nearby, occupied by his tenant Nelson Alibio and family. The second house was about thirty (30) meters away from where the celebration was taking place.[4]

According to Vicente, he noticed that Francisco Abayon left first, followed by the group of Jose including Nelson. Although he also went down, Vicente did not proceed with the group to the other house. From the ground he saw clearly what happened inside the house occupied by Nelson because it was open and lighted by two (2) gas lamps known as *lamparillas* - one inside the house and one at the balcony. He recounted that Nelson, who reached his house first, caught Francisco Abayon sexually assaulting Myrna, Nelson's wife. Nelson forthwith started hitting Francisco.

Upon seeing Francisco and fearing that he might be overpowered by Nelson, Jose and the rest of the group ganged up on Nelson. Aside from the accused Francisco, Jose, Jonathan, Celso, Piloy and Ireneo, Vicente also mentioned Rogelio Cañete, Piloy's "Junior," a certain Sito and a certain Janito[5] as among those who mauled Nelson. They tied his hands with a rope and beat him to death. Jose Abayon then forced himself upon Myrna while his cohorts held her hands and feet. After satisfying his lust, Jose ordered the rest to follow after him. Thus, Celso, Jonathan, Piloy and Ireneo took turns in sexually abusing Myrna, after which, Jose drew a .38 caliber revolver from his waist and shot Nelson twice, then Myrna once.

Vicente Dauba claimed that he advised the accused not to touch the Alibio children who were awakened by the disturbance, and who by then were already out in the balcony, but Jose and Ireneo each got a piece of firewood which they used to beat two (2) of the Alibio children, while Francisco pulled the head of the third child to death.

With the whole family now dead, Jose ordered the son of Ireneo to get a carabao and a cart where they could load their victims and bring them to the riverbank of Tangarak about a kilometer away and bury them there. As they proceeded to the riverbank Vicente followed them to ascertain where the bodies would be brought presumably for burial.

After the victims were buried, Jose remarked that he would excavate the bones after a year, then burn them and throw their remains into the river to dispose of any physical evidence, after which, the group returned to the house of Jose.

The Alibios left twelve (12) sacks of corn, three (3) dozen chickens, two (2) pigs and kitchen utensils in their house which were divided by the accused among themselves. Although Vicente was not present when the loot was distributed, he claimed nevertheless that he saw Piloy and Ireneo carrying the sacks of corn to Tangarak where they lived. He also saw one of the pigs in the possession of Piloy.

All the accused, except those at large, took the witness stand. Their defense rested mainly on denial and alibi. The substance of their testimonies was that the statements of Vicente Dauba that they raped Myrna Alibio, killed all the members of the Alibio family, then buried them and thereafter divided their personal belongings were lies. They denied being present at the house of Jose on the evening of 11 May 1994, saying they were in Tangarak at the time. Tangarak is about six (6) kilometers away from Sto. Niño and can only be negotiated by foot as the terrain is hilly.

Francisco Abayon, Piloy dela Serna and Ireneo de Leon testified that Vicente was a tenant in Jose's land but

maintained that Vicente was driven out by Jose long before 11 May 1994. They claimed that on 15 March 1994 Jose and Ireneo boxed Vicente and ejected him from the land he tenanted after Vicente hacked the leg of Jose's carabao that caused its death. They also testified that Vicente vowed to take revenge on Jose Abayon, thus concluding that it was revenge that prompted Vicente to testify against them.

The accused now claim that the lower court erred: (a) in convicting them on the basis of the testimony of Vicente Dauba which suffers from material flaws and exaggerations; (b) in not discrediting Vicente Dauba; and, (c) in not appreciating their evidence.

Apparently, the thrust of this appeal is to impugn the credibility of witness Vicente Dauba. However, we have thoroughly examined the records, scrutinized the evidence presented by the parties, and found no cogent reason to reverse the decision of the trial court.

The accused assert that they could not have left the house of the Alibios at the height of Jose Abayon's victory celebration, commit atrocities, and later bury the victims' bodies at the Tangarak River. They claim that it is incredible that they would commit the crime in the presence of Vicente Dauba and that, after the victims had been buried, Jose would say in Vicente's presence that he would exhume the bones after a year and burn them so that there would be no evidence left.

But the lower court found Vicente's account of the events that transpired on the eve of 11 May 1994 to be "frank, candid and straightforward, unshaken by the skillful cross-examination by the counsel for the defense."^[6] We have held that a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent is a credible witness.^[7] Indeed, there is nothing in the testimony of Vicente Dauba that would suggest that he was merely fabricating tales or embellishing his story to implicate the accused. The flaws, if any, refer only to minor or inconsequential details which do not affect his credibility or the veracity of his declarations.

We also find no reason to depart from the well-entrenched rule that, in the matter of credibility of witnesses, the factual findings of the trial court should be respected. It is doctrinally settled that the assessment of the credibility of the witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grueling examination.^[8] This assessment is even deemed conclusive and binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily, or that the trial court had plainly overlooked certain facts of substance or value that if considered might affect the result of the case.^[9]

We cannot imagine how Vicente Dauba was able to give a consistent narrative of how the crime was perpetrated and how the bodies of the victims were disposed of if he did not see the actual incident himself. More than just supplying the authorities with the details regarding the manner by which the crime was committed and the persons responsible for it, he was even able to point out the exact burial place of the victims that led to the discovery of their skeletal remains. This is vital and crucial.

It was not improbable that Vicente Dauba would find himself as an spectator to the outrage committed by the accused. After all, he was related to most of them. Moreover, he was not only a tenant-farmer of Jose Abayon upon whose land he depended for his livelihood; he was also residing in the house of Jose. Given his relation and his status as a member of the household of one of the accused, it was not implausible that they not only trusted him to keep his silence about the crime but also would be trusting enough to discuss their devious plans in his presence.

The accused also capitalize on Vicente's delay in reporting the crime. But the Court has already held that delay of a witness in revealing to the authorities what he knows about a crime does not render his testimony false.^[10] Fear

for one's life explains the failure of a witness to a crime to immediately notify the authorities of what exactly transpired. Once such fear is overcome by a more compelling need to narrate the truth, then the witness must be welcomed by the courts to help dispense justice.[11] Also, the natural reticence of most people and their abhorrence to get involved in a criminal case are of judicial notice.[12]

Vicente's delay in reporting the incident to the authorities was adequately explained. According to him, the accused threatened to kill him and were already "guarding" him after the incident. He had every reason to fear for his life considering that he was still living with one of those he was testifying against. So much so that when he revealed the matter to the police authorities in May 1996 he did not return anymore to Sto. Niño but stayed at the police station for four (4) months until he finally moved to Alicia, Zamboanga del Norte.

The accused posit that a conviction for such a grave crime cannot be had on the sole testimony of Vicente Dauba. They insist that no independent evidence was presented to show that Myrna Alibio was raped by the accused or that the bones discovered were those of the victims and that the accused were responsible for killing them.

We disagree. The testimony of a single witness if credible and positive and satisfies the court as to the guilt of the accused beyond reasonable doubt is sufficient to convict.[13] In the instant case, Vicente gave a clear and convincing narration of the crime pointing to the accused as responsible therefor. His lone testimony, therefore, is sufficient to support a conviction.

The trial court wisely gave more weight to the declarations of the prosecution witness than to the testimony of the accused. Their defense consists of denial and alibi. All too often we have ruled that both denial and alibi are weak defenses which cannot prevail where there is positive identification of the accused by the prosecution witnesses.[14] Denial is a self-serving negative evidence that cannot be given greater weight than the declaration of a credible witness who testifies on affirmative matters.[15] We note that the accused failed to establish that they could not be at the vicinity of the Alibio house when the rape and killing took place. For the defense of alibi to prosper, the requirements of time and place must be strictly met.[16] The accused must not only prove their presence at another place at the time of the commission of the offense but they must also demonstrate that it would be impossible for them to be at the scene of the crime when it was committed.[17]

As for the imputation that witness Vicente Dauba had an axe to grind against Jose Abayon and Ireneo de Leon and thus was impelled by an improper motive in testifying for the prosecution, this was also properly disregarded by the trial court. While Jose Abayon and Ireneo de Leon supposedly boxed Vicente, there appears no reason why Francisco, Jonathan and Celso, all surnamed Abayon and Piloy dela Serna, with whom the witness did not bear any resentment, were also implicated as participants in the crime. Apart from the testimonies of the accused, this defense is also uncorroborated by independent and impartial witnesses.

We affirm the lower court's finding that conspiracy attended the commission of the crime. Facts and circumstances revealed a concerted action on the part of the accused in the execution of the brutish acts. They left for the Alibio residence at the same time and actively participated in the sexual abuse of Myrna Alibio by restraining her hands and feet as they took turns in raping her. They banded together in mauling Nelson Alibio to death and, in order to prevent their being implicated in the crime, killed the helpless Alibio children. Their acts clearly demonstrated a spontaneous and collective agreement to accomplish a common criminal design. With conspiracy correctly appreciated, the act of one becomes imputable to all. Hence, each of the accused is liable for each rape committed by their companions. Under Art. 335 of The Revised Penal Code, as amended by RA 7659, the penalty of death shall be imposed when by reason or on occasion of the rape homicide is committed.

However, while several counts of rape were attempted to be proved during the trial, we note that the Information that was filed charged only one (1) count of rape with multiple homicide. Under Sec. 13, Rule 110, 2000 Rules of

Criminal Procedure, an Information should charge only one (1) offense. This is important to apprise the accused fully of the charge against him so that he may not be confused in his defense.[18] Furthermore, an accused cannot be convicted of an offense unless it is clearly charged in the complaint or information since he has that right under the Constitution to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information would violate that constitutional right.[19] Hence, the trial court appropriately convicted the accused of and meted the capital penalty for only one (1) count of rape with homicide. It is axiomatic that the accused can only be convicted for a crime duly charged and proved. Besides, this case was brought to us on automatic review and not upon the initiative of the accused themselves. We are thus called upon to re-examine only their conviction for a single offense, as found by the trial court, and inquire only into the propriety of the imposition of the death penalty.

As to the civil liability of the accused, current jurisprudence sets an indemnity of P100,000.00 for the victim Myrna Alibio since her rape was effectively qualified by circumstances under which the death penalty is authorized by applicable laws, namely, the death of the rape victim.[20] In addition, the amount of P50,000.00 as moral damages must be awarded to her heirs without need of proof nor pleading.[21] A civil indemnity of P50,000.00 as well as moral damages in a similar amount must also be awarded for the death of Nelson Alibio and his children Maribel, Ronald and Josephine.

WHEREFORE, the Decision of the court a quo finding the accused Francisco Abayon, Celso Abayon, Piloy dela Serna and Ireneo de Leon guilty of rape with homicide and imposing upon them the supreme penalty of death is **AFFIRMED**, with the **MODIFICATION** that they are jointly and severally ordered to pay the heirs of Myrna Alibio the amount of P100,000.00 as civil indemnity and P50,000.00 for moral damages.

For the death of Nelson Alibio and their children Maribel, Ronald and Josephine, all surnamed Alibio, the accused are likewise ordered jointly and severally to pay the heirs of these victims P50,000.00 in civil indemnity and another P50,000.00 as moral damages for each death or P400,000.00 for civil indemnity and moral damages, in addition to the amounts mentioned in the immediately preceeding paragraph.

Upon finality of this Decision, let the records of this case be forwarded to the Office of the President for the possible exercise of the presidential pardon.[22]

SO ORDERED.

Davide Jr., C.J., Bellosillo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez and Corona, JJ., concur.

[1]Decision penned by Judge Marcial G. Empleo, RTC-Br. 9, Dipolog City.

[2]Their ages were estimated to be five (5), three (3) and two (2) years although the records do not specify to whom these ages individually appertain; TSN, 21 February 1998, p. 26.

[3]Medico-Legal Report, No. M-256-96, PNP Crime Laboratory Service, Regional Unit 9, Zamboanga City.

[4]Vicente Dauba likened the distance between the houses to be between the witness stand to just behind the fence of the Hall of Justice, estimated to be twenty (20) meters more or less; TSN, 27 February 1998, p. 18.

[5]The last three (3) persons were named in the Affidavit of Vicente Dauba as Romy dela Serna, Josito Villegas and Janito Capillan; TSN, 27 February 1998, p. 10.

[6] Decision, p. 17; Rollo, p. 31.

- [7]People v. Optana, G.R. No. 133922, 12 February 2001, 351 SCRA 485.
- [8]People v. Navarro, G.R. Nos. 132696-97, 12 February 2001, 351 SCRA 462.
- [9]People v. Natividad, G.R. No. 138017, 13 February 2001, 352 SCRA 651; People v. Tumanon, G.R. No. 135066, 15 February 2001, 351 SCRA 676.
- [10]People v. Briol, G.R. No. 111688, 25 October 1995; People v. Basilan, G.R. No. 66257, 20 June 1989, 174 SCRA 115.
- [11]People v. Baduya, G.R. No. 84448, 7 February 1990, 182 SCRA 57.
- [12]People v. Villaruel, G.R. Nos. 110803-04, 25 November 1994, 238 SCRA 408; People v. Basilan, G.R. No. 66257, 20 June 1989, 174 SCRA 115.
- [13]People v. Camacho, G.R. No. 138629, 20 June 2001; People v. Sevalle, G.R. No. 122858, 28 February 2001, 353 SCRA 33.
- [14]People v. Espanola, G.R. No. 119308, 18 April 1997, 271 SCRA 689.
- [15]People v. Padoa, G.R. No. 104400, 28 January 1997, 267 SCRA 64.
- [16]People v. Crisanto, G.R. No. 120701, 19 June 2001.
- [17]Id.; People v. de Leon, G.R. No. 132160, 19 June 2001; People v. Ibo, G.R. No. 132353, 5 March 2001, 353 SCRA 663.
- [18]People v. Dulay, G.R. Nos. 95156-94, 18 January 1993, 217 SCRA 132.
- [19]People v. Moreno, G.R. No. 126921, 28 August 1998, 294 SCRA 728, citing People v. Ortega, G.R. No. 116736, 25 July 1997 276 SCRA 166.
- [20]People v. Ordoño, G.R. No. 132154, 29 June 2000, 334 SCRA 673.
- [21]Ibid.
- [22] Three (3) members of the Court maintain their position that RA 7659, insofar as it prescribes the death penalty, is unconstitutional; nevertheless, they submit to the ruling of the Court by a majority vote that the law is constitutional and that the death penalty should be accordingly imposed.

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